HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 886 of 2001
(Old No. 238/2000)

Bhupal Singh Rawat

Vs

Factory Manager, Bharat Electronics
Kotdwar Garhwal.

Approved for reporting.

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~~Not Approved for Reporting~~

Date of decision 26.10.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 886 of 2001
(Old No. 238/2000)

Bhopal Singh Rawat — Petitioner

Versus

Factory Manager, Bharat Electronics Ltd. Kotdwar Garhwal — Respondent

Dated: 26.10.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present appeal has been filed against the judgment and order dated 17.1.2000 passed by the Workmen Compensation Commissioner, Garhwal Region, Dehradun, thereby dismissing the application of the appellant for compensation.

Briefly stated the appellant was posted in the establishment of the respondent as Security Guard since 5.10.1987. During his employment on 31.1.1992 at night he sustained head injury due to which he became 100% blind. The employer of the petitioner has assured that he would be given compensation and the amount incurred in treatment but no compensation paid to him by the Factory management. His services were also terminated illegally vide order dated 17.3.1995.

Along with the application for compensation under Workmen's Compensation Act, 1923 he also filed an application for condonation of delay on the ground that the petitioner has become completely blind and there is no care-taker with him due to which he could not file the application within limitation.

Notice was issued to the opposite party on the application for condonation of delay. The opposite party has filed objection and has denied the assertions of the petitioner. The learned Commissioner after considering the contentions of both the parties has held that the application for compensation was moved after expiry of the period of limitation and this has dismissed the same vide impugned order. feeling aggrieved the present appeal has been filed by the petitioner.

Section 10 of Workmen's Compensation Act 1923 provides limitation and power of the Commissioner to entertain a claim after expiry of the period of limitation. Section 10 of the Act reads as under:

> *(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within [two years] of the occurrence of the accident or in case of death within [two years] from the date of death:]*
>
> *Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable the accident shall be deemed to have occurred on the*

first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

[Provided] further that in case of partial disablement due to the contracting of any such disease and which does not force the workman to absent himself from work the period of two years shall be counted from the day the workman gives notice of the disablement to his employer:

Provided further that if a workman who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational decease peculiar to that employment, within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]

[Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the [entertainment of a claim]-

(a) If the claim is [preferred] in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the

workman at the time of the accident was working under the control of the employer or of any person employed by him, and the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place were the accident occurred, or

(b) If the employer [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed] had knowledge of the accident from any other source at or about the time when it occurred:]

Provided farther that the Commissioner may [entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been [preferred], in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or [prefer] the claim, as the case may be, was due to sufficient cause.

From the pleadings of the petitioner it has become evidently clear that he sustained head injury during his employment as security guard in the establishment of the respondent. Respondent is a Factory and thus comes within the definition of industry and petitioner being employee in the

factory is entitled to get compensation under the Workmen's Compensation Act. As the accident had occurred with the premises of factory itself, therefore, the employer had knowledge of accident and he was liable to pay compensation to the petitioner even without serving the notice.

The petitioner had claimed that he developed blindness due to head injury sustained during the course of his employment as security guard. The respondent has give him assurance to pay compensation but nothing was paid to him. Due to complete blindness he has become helpless and he could not prefer application for compensation within limitation.

The Workmen's Compensation Act is a public welfare legislation and the application by the victim of accident should not be thrown aside by the legal authority prescribed under the Act merely on technical grounds which includes ground of limitation. The prescribed authority (Commissioner) under the Act should adopt a humanitarian approach while considering the application of a person who has become 100% blind and helpless.

The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood and under:

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

The Apex Court in (1998) 7 SCC 123, N. Balakrishnan vs. M. Krishnamurty has held as under"

11. *Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to*

dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes of lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, never causes would sprout up necessitating never persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainly and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. *A court knows that refusal of condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari*[1] *and State of W.B. v. Administrator, Howrah Municipality*[2]*.*

13. *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or*

it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

Thus in view of the observation made above, the learned Commissioner was not justified in rejecting the application of the petitioner for condonation of delay merely on the ground of limitation.

The appeal is allowed with costs. The application of the petitioner for condonation of delay in filing the claim petition is allowed. The Workmen's Compensation Commissioern is directed to decide the claim petition on merit within three months after the receipt of the certified copy of this order.

(Rajesh Tandon J.)

26.10.2004
*Dhyani